IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 156 of 2007
With
COMPANY PETITION No. 157 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GE INDIA PRIVATE LIMITED - Petitioner(s)
Versus
. - Respondent(s)

==========

Appearance :
NANAVATI ASSOCIATES for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 29/08/2007

COMMON ORAL JUDGMENT

1. The present petitions are for sanctioning the Scheme of Arrangement and Demerger in the nature of transfer and

vesting of the demerged undertaking being the Plastic Division of he Transferor Company namely; GE India Industrial Pvt. Ltd., the petitioner of Company Petition No.156 of 2007 and Enduring Plastics Pvt. Ltd., being transferee Company petitioner of Company Petition No.157 of 2007.

2. In Company Petition No.156 of 2007, pursuant to the order dated 11.5.2007 passed by this Court(Coram: M.R. Shah, J.) the meeting of the equity shareholders as well as preference shareholders were dispensed with. Further, the meeting of the secured creditors and unsecured creditors were ordered to be convened on 28.6.2007, after issuing public advertisement and the Chairman was ordered to file the report. Pursuant thereto, Mr.Chandan Jain, the Chairman appointed for such purpose has filed the affidavit dated 29.6.2007 together with the copy of the proceedings of the meeting showing that at the said meeting the Scheme of Arrangement is approved by the secured and unsecured but with the amendment to change in the appointed dated of 3rd August, 2007 and for consequent action by the transferor and transferee companies and also for giving effect to the transaction carried out during the said period.

3. It has been stated in the petition that pursuant to the amendment made, fresh consent letters of the equity shareholders and preference shareholders were obtained and the Board of Directors have also passed the resolution for the amended scheme of arrangement and demerger. Such consent letters of the equity shareholders are produced at Annexure P-10, consent letters of preference shareholders are produced at

Annexure P-11 and copy of the Board Resolutions are produced at Annexure P-12. The amended scheme is at Annexure P-1.

4. In the case of the Transferee Company, pursuant to the order dated 11.5.2007 passed by this Court(Coram: M.R.Shah, J.) in Company Application No.234 of 2007, it was recorded that there is no secured or unsecured debts as on 30.4.2007 and the meeting of the equity shareholders was ordered to be convened on 28.6.2007 after issuing public advertisement and the Chairman was ordered to file the report. Pursuant thereto, Mr.Rupak Saha, Director of the petitioning company and appointed Chairman for such purpose has filed the affidavit dated 29.6.2007 and as stated in the said affidavit the scheme came to be considered with the amendment as proposed and approved in the meeting of the secured and unsecured creditors of the transferor Company. As per the said report, the scheme is approved by all the shareholders present at the meeting.
5. Both these petitions came to be admitted on 12.7.2007 and it was ordered to advertise in two daily newspapers, viz. Times of India (English Daily) and Gujarat Samachar (Gujarati Daily), both Ahmedabad Editions and the publication in the Government gazette was dispensed with. The notice was also ordered to be issued to the Central Government through Regional Director, Department of Company Affairs, Mumbai.
6. The affidavit is filed by Mr.Chandan Jain, Director of the petitioner Company of Company Petition No.156 of 2007 together with the copy of the paper publication pursuant to the order passed by this Court. As per the affidavit

filed by Mr.Nandesh Chudgar, learned Counsel for the petitioner companies, no objection is received by the office of the learned Advocate and the another affidavit is filed stating that no objection is received by the Company concerned opposing the scheme of arrangement or otherwise, both in response to the public advertisements.

7. In response to the notice issued to the Central Government, Mr.P.L.Malik, Assistant Registrar of Companies has filed affidavit raising objection based on the communication received by the Registrar of Companies vide letter dated 7.8.2007 from the Regional Director, Company Affairs.

8. One objection pertains to submission of the latest financial accounts before this Court at the time of hearing, would stand satisfied in view of the subsequent affidavit filed by Chandan Jain, Director of the petitioning company in Company Petition No.156 of 2007 and another affidavit is filed by Rupak Saha in Company Petition No.157 of 2007 whereby the latest financial status as on 31.3.2007 in case of the Company of Company Petition No.156 of 2007 and as on 17.8.2007 in case of Company Petition No.157 of 2007 respectively are produced.

9. The second objection pertains to the increase of the authorised share capital and compliance to the provisions of Section 94/97 read with Schedule 10 of the Companies Act by the transferee Company. As such, as per Clause 4.1.4 in the event of the increase of the authorised share capital the additional fee is to be paid and, therefore, the said objection would not survive qua the payment of fees. So far as the requisite resolution is concerned, increase in

the authorised share capital itself is a part of the scheme. Once the sanction is granted no separate resolution may be required, except the requisite declaration for such purpose for giving effect to the order for sanction passed by this Court. Hence, such objection would no more survive.

10. No other adverse circumstances are brought to the notice of this Court.

11. Hence, the present Scheme of arrangement and demerger is sanctioned as per the provisions of the Companies Act.

12. Petitions are allowed to the aforesaid extent.

13. The cost of the learned Assistant Solicitor General shall be paid by the petitioning Companies which is quantified at Rs.3,500/- for each petition. It will be open to the petitioning Companies to pay the cost directly to the counsel concerned by A/c. Payee cheque.

(Jayant Patel, J.)

vinod